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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Appellant,

v.

BRIAN KEITH TRIPP,

Defendant and Respondent.

F045361

(Super. Ct. No. BF105008A)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Stephen P. Gildner and James M. Stuart, Judges.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Mary Jo Graves, Assistant Attorney General, Stephen G. Herndon and Rachelle A. Newcomb, Deputy Attorneys General, for Plaintiff and Appellant.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Respondent.

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* Before Harris, Acting P.J., Wiseman, J. and Levy, J.

STATEMENT OF THE CASE

On March 4, 2004, the Kern County District Attorney filed an information in superior court charging respondent Brian Keith Tripp as follows: count I—possession of methamphetamine for sale with a prior narcotics-related felony conviction and prison term (Health & Saf. Code, §§ 11378, 11370.2, subd. (a)); Pen. Code, § 667.5, subd. (b)); count II—misdemeanor possession of narcotics paraphernalia (Health & Saf. Code, § 11364); count III—misdemeanor destruction or concealment of documentary evidence (Pen. Code, § 135); and count IV—misdemeanor resisting a peace officer (Pen. Code, § 148, subd. (a)(1)).

On March 5, 2004, respondent was arraigned, pleaded not guilty to the substantive charges, and denied the special allegations.

On March 12, 2004, respondent filed a motion to quash a search warrant and to suppress evidence (Pen. Code, § 1538.5).

On March 17, 2004, the district attorney filed written opposition to the motion.

On March 29, 2004, the court granted the district attorney's motion to amend count I of the information to allege the prior narcaotics-releated felony conviction to be a violation of Health and Safety Code section 11370.2, subdivision (c) rather than subdivision (a).

On the same date, the court conducted a contested hearing on the motion to suppress, heard the arguments of counsel, and took the matter under submission. Later that same day, the court granted respondent's suppression motion pursuant to Penal Code section 1538.5 by minute order.

On April 2, 2004, the district attorney filed a notice of intention to file a writ (Pen. Code, § 1538.5, subds. (*l*), (*o*)).

On April 9, 2004, the court vacated the trial date and dismissed the case on its own motion.

On April 15, 2004, appellant filed a timely notice of appeal.[1]

STATEMENT OF FACTS

In January 2004, Kern County Deputy Probation Officer Ernie Geronimo was assigned to the Kern Narcotics Enforcement Team (KNET). As part of his duties, Geronimo prepared a statement of probable cause that was incorporated by reference in an affidavit in support of a warrant to search respondent's Bakersfield residence. The statement of probable cause provided in relevant part:

> "Within the past 10 days I spoke to a confidential reliable informant herein after referred to as CRI (1) who said he/she knows a white male named Bryan Tripp and has seen him in the past 10 days in possession of methamphetamine for the purpose of sales at his residence. The CRI (1) stated that Bryan Tripp lives at ... Lexington Avenue Bakersfield, Ca. The CRI (1) described Bryan Tripp as being in his early to mid 40's, 5'10", 170 pounds, having short brown hair. I responded with the CRI (1) to the area where Lexington Avenue and Pesante St. intersect. The CRI (1) pointed out … Lexington Avenue as the residence where he/she knows Bryan Tripp to live and [sell] methamphetamine. The CRI (1) pointed out a Chevrolet pick-up truck license plate number 3R11754 parked in front of … Lexington Avenue and stated that he/she has seen Bryan Tripp use the pick-up truck to make deliveries of methamphetamine.
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> "I conducted a Department of Motor Vehicles registration check on California license plate number[] 3R11754 and it came back to a 1967 Chevrolet pick-up truck registered to Bryan Tripp, … Lexington Avenue, Bakersfield, Ca. I conducted a CJIS inquiry on the address … and I found

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[1] Penal Code section 1238 states in relevant part:

> "(a) An appeal may be taken by the people from any of the following: [¶]...[¶] (7) An order dismissing a case prior to trial made upon motion of the court pursuant to Section 1385 whenever such order is based upon an order granting the defendant's motion to return or suppress property or evidence made at a special hearing as provided in this code."

a white male named Bryan Tripp with two prior arrests for sales of methamphetamine and a prior arrest for manufacturing methamphetamine listing … Lexington Avenue as his address of record. I obtained a booking photograph of Bryan Tripp from a prior arrest and I showed the photo to the CRI (1). The CRI (1) identified the person in the photo as the person he/she knows as Bryan Tripp dealing methamphetamine from … Lexington Avenue. Within the past ten days I responded to … Lexington Avenue to conduct surveillance of the residence and during surveillance of the residence, I have observed a white male matching Bryan Tripp's description walk freely into the residence using the front door; he neither knocked nor waited for anyone to open the door for him.

"Within the past 30 days I was contacted by another confidential reliable informant herein after will be referred to as CRI (2) who said he/she knows a white male named Bryan Tripp who lives on the south side of Lexington Avenue east of Pesante St. in Bakersfield dealing methamphetamine from his residence. The CRI (2) described Bryan Tripp in his mid 40's 5'10" approximately 170 driving a white pick-up truck delivering methamphetamine. The CRI (2) stated that he/she has been to Bryan Tripp's residence within the last 30 days and seen him in possession of methamphetamine for the purpose of sales.

"Based on my training and experience in narcotic investigations, I know that persons engaged in narcotics trafficking will use their residence(s) to conceal narcotics and/or paraphernalia, large amounts of currency, and other assets.

"I also know that persons engaged in narcotics trafficking will use their vehicle(s) to store, transport, and sell narcotics.

"CRI (1) and CRI (2) will not be paid a sum of money by the Kern Narcotic Enforcement Team for assisting in the above investigation and are receiving leniency or consideration in a pending criminal matter.

"As to the reliability of both CRI (1) and CRI (2) they have provided information to Officers of the KNET unit within the past 4 months, which has led to the arrest of at least three persons and a seizure of dangerous drugs or narcotics.

"I know that both confidential reliable informants are familiar with narcotics and dangerous drugs, their appearance, method of packaging and use due both informant's past experience with narcotics and dangerous drugs.

> "I desire to keep the identity of the informants confidential because I believe that the disclosure of their identity would endanger their safety and wellbeing. In my experience informants engaged in narcotics investigations have been seriously harassed, beaten, or murdered by suspects or their associates. The confidential character of the informant is further desired to be maintained for the reason that this will preserve the said informants[']future usefulness and effectiveness to law enforcement officers engaged in investigating and uncovering illegal activities.
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> "Based on the facts contained in this Statement of Probable Cause, and my training and experience, I believe the previously described evidence is indicative of methamphetamine trafficking, as well as, currency derived from methamphetamine sales will be found in the locations and vehicles to be searched."

The Honorable Charles McNutt, judge of the superior court, issued a search warrant based upon the affidavit at 10:05 a.m. on January 16, 2004. At 7:00 p.m. that same day, Geronimo and six other KNET members dressed in uniforms went to respondent's home on Lexington Avenue to serve the search warrant Although it was dark, there was some lighting in or about the front yard of the residence. Geronimo recalled seeing a front porch light and light illuminating from the window. He testified at the suppression hearing, "[A]ll the lights were on." Geronimo said there was a van parked in front of the house. A small entry way was located between the van and an adjacent gated chain link fence. The front yard was small and the distance between the front fence line and the front door was about 10 feet.

Upon arrival, Geronimo saw two females standing in the front yard next to the open front door of respondent's residence. One of the females was standing within two or three feet of the open black security screen door and talking with someone inside the residence. However, Geronimo could not see the person inside and did not know exactly what the person inside or the females were saying. The security door opened out, rather than into, the residence. Assisting officers detained the females and took them to the ground. At the same time, Geronimo announced, "Bakersfield Police Department, search warrant," several times over a 10-second period as he walked to the front door.

Both the metal security door and main front door were open when Geronimo reached the entry way. He saw an individual rapidly move toward the rear of the residence as he entered the premises. Geronimo said the door was wide open and he announced, "Police Department, search warrant" right before he entered but did not knock or ring the doorbell. He estimated that five seconds lapsed from the time he got to the threshold of the front door to the time he crossed the threshold. Through the open doors Geronimo observed somebody moving southbound through the house in a rapid manner from a hallway next to the kitchen.[2] The individual headed to the back of the residence and Geronimo believed that respondent was the individual. As Geronimo entered the residence, he saw a White male named Derrick Arnold leave the northeast bedroom. Geronimo placed Arnold on the ground and continued running through the residence in a southbound direction announcing, "Bakersfield Police Department, search warrant." Geronimo said he announced the officers' presence more than three times before he reached the front door and more than two times within the residence. After placing Arnold on the ground, Geronimo ran straight to the back of the house and located respondent in the backyard.

Respondent's step-niece, Christine Olvera, testified on his behalf at the suppression hearing. Christine said she and her mother, Dolores Ann Tripp,[3] were leaving respondent's home during the 7:00 p.m. hour of January 17, 2004. They had already said goodbye to respondent in his bedroom in the back of the house. They were not talking to him as they walked out of the front door. Dolores walked ahead of

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[2] Geronimo described the layout of the home in the following manner: "There was like a living room, kitchen area right behind it and there was like bedrooms to the east and there was like a small hall right by the kitchen, I guess, I don't know; all makeshift one hallway-kitchen-living room, all right there."

[3] Olvera said her mother is married to respondent's brother, Mark Tripp.

Christine through the front door and they were approximately five steps from the front door, in the middle of the sidewalk leading to the house when they saw three officers. The officers had come from the left side "into the fence." Christine confirmed a wooden main door and a black metal screen/security door were located at the front of the house. She said the security door was on a spring so that "[w]hen you open it, it shuts itself." She also said both doors were closed as they departed the residence and saw the officers.

When Christine saw the officers, they pushed her down and entered the front door. Christine, her mother, and the officers were all inside the fenced front yard of the home. Someone said "Police Department" while they were in the front yard but, according to Christine, no one said the words "search warrant." Christine, who was six months pregnant, stayed on the ground and became sick. She said the officers entered the house "real fast" without knocking on the door or ringing the doorbell. After the officers pushed her to the ground face down, she could not see what they were doing. At the time police arrived, Christine was unaware there was a warrant out for her arrest for being under the influence.

At the conclusion of Olvera's testimony, both sides rested and the court heard the respective arguments of counsel. The court took the issue of the search warrant under submission, noting: "I am satisfied that knock/notice was complied with, at least sufficient but the issue of the facial validity of the search warrant I will take under submission . . .." On March 29, 2004, the court filed a minute order stating: "MOTION TO SUPPRESS PURSUANT TO PC 1538.5 IS GRANTED."

DISCUSSION

Appellant contends the trial court's ruling regarding the warrant was incorrect because the affidavit contained adequate facts demonstrating probable cause.

Appellant specifically argues:

> "Respondent argued that the affidavit supporting the warrant was conclusory and should have contained more specific information regarding

what the confidential informants witnessed. He based this argument on the CRIs' conclusions that the methamphetamine was possessed for sale. Respondent, like the trial court here, ignores the entirety of the affidavit.

"First, both CRIs are familiar with packaging of drugs and use of drugs. This knowledge gave them a basis to conclude whether the drugs that they saw were for personal use. The number of packages, the type of packaging, and the quantity were all indicators regarding whether the methamphetamine possessed was possessed for personal use. Indeed, despite the different backgrounds and experience they must have had with drugs, both concluded that the drugs they saw were possessed for sale.

"Second, and more importantly, other information provided by the CRIs allowed the magistrate to reach the conclusion that the methamphetamine was possessed for sale. Both CRIs saw respondent use his truck to *deliver* methamphetamine but neither saw respondent ingest or use methamphetamine. Further, respondent's possession of methamphetamine was at two different times, both recent.

"Third and finally, the affidavit indicated that respondent had two prior arrests for sales of methamphetamine and a prior arrest for manufacturing methamphetamine at the very residence where the CRIs saw respondent in possession of methamphetamine for sale. 'A suspect's narcotics arrest record is relevant to the magistrate's determination of probable cause. [Citation.]' (*People v. Kershaw* (1983) 147 Cal.App.3d 750, 760.)

"Accordingly, all of this information in the affidavit combined to present a 'fair probability' that methamphetamine would be found at respondent's home. In any event, Geronimo acted in good faith reliance upon it."

Respondent counters:

"The primary defect in the affidavit supporting the warrant was that it should have contained more specific information regarding what the confidential informants allegedly witnessed. An affidavit which related conclusions without revealing foundational facts to support the conclusions is insufficient to establish probable cause, as a matter of law . . ..

"In the instant case, the information related in the affidavit is conclusory only. The affidavit provides nothing in terms of what the informants allegedly saw that led to the conclusion that Mr. Tripp possessed methamphetamine for sale. These unsupported conclusions lacking facts failed to establish a substantial probability that contraband would be found at Mr. Tripp's home....

"The state argues that the affidavit is saved because according to Officer Geronimo both CRIs were familiar with the packaging of drugs and the use of drugs.... [¶]...[¶]

"What the magistrate needed to know and what the affidavit should have explained were exactly those facts that the state merely speculates about: 'the number of packages, the type of packaging, and the quantity' of the methamphetamine. The magistrate needed to know what the CRIs actually saw and said, in part to determine whether the details of their stories were consistent with each other. Otherwise, there was no way to evaluate the CRIs' bald conclusions that Mr. Tripp possessed methamphetamine for sale.

"Next ... the state claims the affidavit is saved because both CRIs saw Mr. Tripp at two different times use his truck to deliver methamphetamine but neither saw Mr. Tripp ingest or use methamphetamine. Again, the state is exaggerating. The CRIs said nothing about not seeing Mr. Tripp use methamphetamine. The CRIs also said nothing about how they inferred or knew that Mr. Tripp was making deliveries of methamphetamine in his truck. Again, anyone could have repeated rumors that Mr. Tripp was selling and delivering methamphetamine, including these CRIs who wanted to obtain leniency in their pending cases.... [¶]...[¶]

"Moreover, the CRI whose information was as much as 30 days old gave information that was stale. Of course, 'stale' information of past conduct will not support an application for a search warrant....

"Finally, the state argues that the 'affidavit indicted that Mr. Tripp had two prior arrests for sales of methamphetamine and a prior arrest for manufacturing methamphetamine at the very residence where the CRIs saw Mr. Tripp in possession of methamphetamine for sale[.]' Again, the state, apparently recognizing the weakness of its argument, succumbs to a creative reading of the affidavit. The affidavit does not say that Mr. Tripp manufactured methamphetamine at his residence. It simply says that Mr. Tripp's 'address of record' was … Lexington Avenue, Bakersfield, at the time of his arrest for manufacturing methamphetamine. Mr. Tripp could have been arrested for manufacturing methamphetamine in many places other than his home. The affidavit does not say he was found manufacturing methamphetamine in his home. [¶]...[¶]

"In short, the affidavit made only general allegations and boilerplate conclusions that would be true if simply based on rumors.... [¶]...[¶]

> "The only evidence in the affidavit of current involvement with methamphetamine by Mr. Tripp is the CRIs' allegations that Mr. Tripp sold and delivered methamphetamine. These conclusions without any corroboration do not establish probable cause to believe that methamphetamine would be found in Mr. Tripp's home. ... The need for corroboration was particularly acute here, as the CRIs had an incentive to repeat rumors and gave absolutely no details about what they saw. [¶]...[¶]
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> "In this investigation, Officer Geronimo corroborated merely two 'pedestrian facts' (i.e. Mr. Tripp lived in his residence and owned a truck); he did not corroborate any facts confirming Mr. Tripp's alleged methamphetamine sales, deliveries, or possession. ... Neither does the affidavit include reliable, nonconclusory information sufficient to support a finding that Mr. Tripp possessed methamphetamine.…"

In motions under Penal Code section 1538.5, the defendant has the burden of raising the issue he or she wants the court to decide, notwithstanding the fact the prosecution may have the burden of proof on the particular issue. The burden of raising an issue means a party's obligation to bring it to the attention of the trial court and the opposing party. A party who fails to do so waives the right to raise the issue on appeal. This specificity requirement reflects the burden of raising an issue and does not depend on the allocation of the burden of proof. (*People v. Williams* (1999) 20 Cal.4th 119, 128; Cal. Judges Benchbook: Search and Seizure (CJER 2002) § 6.45, p. 421; Pen. Code, § 1538.5, subd. (a)(1)(B).) Thus, the burden of proof of establishing the invalidity of a search warrant is on the defendant. (*People v. Wilson* (1967) 256 Cal.App.2d 411, 417.)

A proceeding under Penal Code section 1538.5 to suppress evidence is one in which a full hearing is held on the issues before the superior court as a finder of fact. In such a proceeding the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence, and draw factual inferences is vested in the trial court. On appeal, all presumptions favor the exercise of that power. (*People v. Green* (1996) 46 Cal.App.4th 367, 372.)

Penal Code section 1538.5, subdivision (*l*) states in relevant part:

> "If the defendant's motion to return property or suppress evidence is granted, the trial of a criminal case shall be stayed to a specified date pending the termination in the appellate courts of this state of the proceedings provided for in this section ... and, except upon stipulation of the parties, pending the time for the initiation of these proceedings. Upon the termination of these proceedings, the defendant shall be brought to trial as provided by Section 1382, and, subject to the provisions of Section 1382, whenever the people have sought and been denied appellate review pursuant to subdivision (*o*), the defendant shall be entitled to have the action dismissed if he or she is not brought to trial within 30 days of the date of the order that is the last denial of the petition. Nothing contained in this subdivision shall prohibit a court, at the same time as it rules upon the search and seizure motion, from dismissing a case pursuant to Section 1385 when the dismissal is upon the court's own motion and is based upon an order at the special hearing granting the defendant's motion to return property or suppress evidence.…"

Penal Code section 1538.5, subdivision (*o*) states in relevant part:

> "Within 30 days after a defendant's motion is granted at a special hearing in a felony case, the people may file a petition for writ of mandate or prohibition in the court of appeal, seeking appellate review of the ruling regarding the search or seizure motion.…"

In Penal Code section 1538.5 proceedings, the trial court's findings as to credibility of witnesses and the weighing of evidence, whether express or implied, must be upheld on appeal if they are supported by substantial evidence. The trial court also has the duty to decide whether, on the facts found, the search was unreasonable within the meaning of the Constitution. Although that issue is a question of law, the trial court's conclusion on the point should not lightly be challenged by appeal or by petition for extraordinary writ. Of course, if such review is nevertheless sought, it becomes the ultimate responsibility of the appellate court to measure the facts, as found by the trier, against the constitutional standard of reasonableness. (*People v. Green, supra,* 46 Cal.App.4th at p. 372.)

Expressed another way, the question facing a reviewing court asked to determine whether probable cause supported the issuance of a warrant is whether the magistrate had

a substantial basis for concluding a fair probability existed that a search would uncover wrongdoing. The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him or her, including the veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. The warrant can be upset only if the affidavit fails as a matter of law to set forth sufficient competent evidence supportive of the magistrate's finding of probable cause. That is because it is the function of the trier of fact, not the reviewing court, to appraise and weigh evidence when presented by the affidavit as well as when presented by oral testimony. This standard of review is deferential to the magistrate's determination. (*People v. Thuss* (2003) 107 Cal.App.4th 221, 235.)

In the instant case, appellant acknowledges "the trial court heard no testimony regarding the sufficiency of the warrant. Instead, the testimony at the hearing solely concerned the adequacy of the knock/notice given.... Hence, the trial court's ruling on the warrant was based solely on the language included in the warrant and the affidavit." For the purpose of issuing a search warrant, the standard of probable cause is whether the affidavit (1) states facts; (2) that make it substantially probable; (3) that there is specific property; (4) lawfully subject to seizure; (5) presently located; and (6) in the particular place for which the warrant is sought. (*People v. Frank* (1985) 38 Cal.3d 711, 727.) The affidavit must set forth the facts tending to establish the grounds of the application or probable cause for believing they exist. (Pen. Code, § 1527.)

Here, the informants simply told the affiant that respondent used his truck to deliver methamphetamine and knew he was dealing methamphetamine. According to the affidavit, one informant saw respondent with methamphetamine within 10 days of the search and the other saw respondent with methamphetamine within 30 days of the search. Officer Geronimo confirmed that respondent apparently lived at a specific address on Lexington Avenue in Bakersfield and owned a white pickup truck. Geronimo maintained

the informants were reliable because within the preceding four months they had provided information that led to arrests and seizure of drugs. He also indicated both informants were familiar with illicit drugs, their use, and methods of packaging. Geronimo further admitted the informants were "receiving leniency or consideration in a pending criminal matter" but not money.

A mere conclusory statement gives the magistrate virtually no basis at all for making a judgment regarding probable cause. His or her action cannot be a mere ratification of the conclusions of others. To ensure such abdication of the magistrate's duty does not occur, courts must continue to conscientiously review the sufficiency of affidavits on which warrants are issued. (*Illinois v. Gates* (1983) 462 U.S. 213, 239.) As noted above, in a Penal Code section 1538.5 proceeding, the power to judge the credibility of the witnesses, resolve any conflicts in the testimony, weigh the evidence, and draw factual inferences is vested in the trial court. On appeal, all presumptions favor the exercise of that power. (*People v. Green, supra,* 46 Cal.App.4th at p. 372.) Here, the trial court could reasonably conclude the brief statements of the informants were conclusory in nature, were not supported by adequate foundational facts, and were further undercut by the affiant's acknowledgment that the informants were receiving consideration in a pending criminal matter. Appellant directs our attention to various recitations in the affidavit in support of issuance of the warrant. However, we are reminded that the power to weigh the evidence and draw factual inferences is vested in the trial court. In view of the conclusory nature of the search warrant affidavit, the trial court did not err in granting the motion to suppress.

Appellant further contends Officer Geronimo acted in good faith reliance upon the search warrant, arguing:

> "In *United States v. Leon* [(1984)] 468 U.S. 897, 922-923, and its companion case, *Massachusetts v. Sheppard* (1984) 468 U.S. 981, 987-988, the Supreme Court held that 'the exclusionary rule should not be applied when the officer conducting the search acted in objectively reasonable

> reliance on a warrant issued by a detached and neutral magistrate that subsequently is determined to be invalid....' [¶]...[¶]
>
> "In the instant case, since no exceptions to the *Leon* good faith rule are present, the presumption for good faith reliance on the warrant should apply. Respondent never asserted that the affidavit supporting the warrant was based on misstatements or omissions by the affiant detective or that the issuing magistrate abandoned his judicial role.... Furthermore ... the affidavit was not 'so lacking in indicia of probable cause that it would be entirely unreasonable for an officer to believe such cause existed.' [(*People v. Camarella* (1991) 54 Cal.3d 592, 596], quoting *United States v. Leon, supra,* 468 U.S. at p. 923 ….) Nor was the warrant 'so facially deficient that the executing officer could not reasonably presume it to be valid.' (*People v. Camarella, supra,* 54 Cal.3d at p. 596.)"

In the superior court, the prosecution's sole reference to good faith reliance was set forth in a single sentence in its written opposition to motion to suppress evidence, filed March 17, 2004: "At all times the officer acted in good faith pursuant to US v Leon (1984) 468 US 897." Respondent maintains the prosecution waived the *Leon* argument at the trial level because, aside from the foregoing sentence, the prosecutor did not argue it or ask the trial judge to save the warrant based on the good faith exception. In reply, appellant contends it adequately raised the issue of good faith in the trial court and the doctrine of waiver should not apply.

A criminal defendant must state the grounds for a motion under Penal Code section 1538.5 with sufficient particularity to give notice to the prosecution of the sort of evidence it will need to present in response. (*People v. Williams, supra,* 20 Cal.4th at p. 123.) In the instant case, respondent asserted in his points and authorities that (1) the affidavit in support of the search warrant lacked a factual foundation to establish probable cause, and (2) the officers failed to comply with knock-notice. Appellant filed written opposition arguing (1) there was sufficient probable cause in the affidavit, and (2) the officers acted reasonably and were in substantial compliance with knock-notice. The prosecutor's solitary reference to *Leon* was the concluding sentence of its discussion on the sufficiency of probable cause.

In the context of a warrantless search or seizure, the defendant must specify the precise grounds for a motion to suppress, including pointing out any inadequacies in the prosecution's justification for a warrantless search or seizure. However, the defendant does not have to guess what those justifications will be. When the prosecution asserts some justification for the warrantless search or seizure, the defendant can then respond by pointing out any inadequacies in that justification. (*People v. Williams, supra,* 20 Cal.4th at pp. 135-136.) Here, in the context of a search pursuant to a warrant, respondent specified precise grounds for his motion to suppress and appellant refuted respondent's arguments, summarily asserting Officer Geronimo's good faith "[a]t all times." The *Leon* case counsels that evidence should not be suppressed if the officer's reliance on a search warrant was reasonable. The standard to be employed is an objective one and the prosecution bears the burden of proof. (*United States v. Hendricks* (9th Cir. 1984) 743 F.2d 653, 656, citing *United States v. Leon* (1984) 468 U.S. 897, 925-926.) In our view, the prosecution's mere assertion of "good faith reliance," without further argument or authority, does not satisfy its burden of proof under *Leon* and the contention must be deemed waived on appeal.[4]

DISPOSITION

The March 29, 2004 order granting the motion to quash the search warrant and suppress evidence and the April 9, 2004 order of dismissal are affirmed.

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[4] In *United States v. Hendricks, supra,* 743 F.2d at p. 656, the Ninth Circuit Court of Appeals stated an intermediate appellate court can reach the issue of good faith reliance for the first time on appeal even where the lower court did not have occasion to determine the issue. The Ninth Circuit explained: "[T]he district court's determination of good faith would be subject to *de novo* review as a mixed question of fact and law under *United States v. McConney,* 728 F.2d 1195, 1201 (9th Cir. 1983) ...." In our view, the record in the instant case is inadequate for that purpose and the contention should be deemed waived on appeal.